

**DURHAM REGIONAL POLICE SERVICE DISCIPLINE HEARING  
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,  
AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF**

**DURHAM REGIONAL POLICE SERVICE**

**AND**

**STAFF SERGEANT PAT WATERS #690**

**CHARGE:**

**DISCREDITABLE CONDUCT**

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**DECISION**

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**Before:** Superintendent (R) Greg Walton  
Ontario Provincial Police

**Counsel for the Prosecution:** Mr. Alex Sinclair

**Counsel for the Defence:** Ms. Joanne Mulcahy

**Hearing Date:** July 15, 2024

## OVERVIEW

### **Background**

Staff Sergeant Pat Waters #690 of the Durham Regional Police Service satisfied first appearance obligations on May 31, 2023. The Notice of Hearing contained three counts of discreditable conduct and three counts of insubordination. The allegations spanned the period of February 1, 2022, to November 30, 2022, while Staff Sergeant Waters was a member of the Traffic Enforcement Unit. Sergeant [redacted] was also a member of the Traffic Enforcement Unit. Sergeant [redacted] lodged an internal complaint about Staff Sergeant Waters' treatment of her which resulted in the allegations before this Tribunal.

On April 18, 2024, I heard oral submissions regarding a Motion seeking Production brought forth by Staff Sergeant Waters. In a decision dated April 25, 2024, I ordered the Durham Regional Police Service to disclose a portion of the sought after material. The subsequent hearing was scheduled to be heard over 15 hearing dates between July 15, 2024 and August 2, 2024.

On July 15, 2024, a new Notice of Hearing was presented to the Tribunal condensing the allegations to one count of discreditable conduct. Unbeknownst to this Tribunal until that time, Staff Sergeant Waters also faced allegations which were before another Hearing Officer. The particulars in relation to that matter were included in this new Notice of Hearing.

Staff Sergeant Waters entered a guilty plea to the new count of discreditable conduct and the original Notice of Hearing was marked withdrawn at the request of Counsel. The allegations contained in the Notice of Hearing before the other Hearing Officer will be addressed accordingly by that Tribunal.

### **Allegations of Misconduct (amended)**

#### Count #1 – Discreditable Conduct

Staff Sergeant Waters is alleged to have committed misconduct in that between February 1, 2022, and November 30, 2022, he acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, thereby committing the offence of discreditable conduct contrary to Part V, clause 80(1)(a) of the *Police Services Act* as amended, and section 30, clause 2(1)(a)(xi) of the Schedule Code of Conduct, Ontario Regulation 268/10, as amended under the *Act*.

Statement of Particulars:

Staff Sergeant Waters has been employed by the Durham Regional Police Service since 1999. As of today's date, Staff Sergeant Waters has no disciplinary history. On May 4, 2023, Staff Sergeant Waters was charged with misconduct.

For the purposes of a plea of guilty to one count of discreditable conduct and joint submission on penalty, the prosecution and defense agree to the following facts:

Between January 2022, and November 23, 2022, Staff Sergeant Waters supervised Sergeant [redacted] in the Traffic Services Unit. Within the period from February 1, 2022, to November 23, 2022, Staff Sergeant Waters engaged in vexatious commentary and conduct against Sergeant [redacted] that Staff Sergeant Waters ought reasonably to have known was unwelcome, including:

- a) Taking actions that eroded member's perception of Sergeant [redacted] authority within the Traffic Services Unit.
- b) Making inappropriate comments about Sergeant [redacted] to subordinate members; and,
- c) Speaking with Sergeant [redacted] in an inappropriate manner on or about April 15, 2022, during a telephone conversation while off duty. This included interrupting Sergeant [redacted] speaking in an elevated voice, and otherwise engaging in a disrespectful and condescending manner.

Staff Sergeant Waters' conduct breached the Durham Regional Police Service Code of Professional Conduct (AO-09-010) and the Durham Regional Police Service Anti-Harassment and Violence Policy (HR-02-011).

Sergeant [redacted] was materially impacted by Staff Sergeant Waters' conduct. She reported experiencing stress.

In November 2022, Staff Sergeant Waters taught a course at the Durham Regional Police Service Education and Training Centre. One of the attendees at the course was Staff Sergeant [redacted]

During the course, Staff Sergeant Waters made inappropriate comments about Staff Sergeant [redacted]. On one occasion, Staff Sergeant Waters made contact with Staff Sergeant [redacted] elbow in order to reposition her body to face a whiteboard, which was unwelcome.

Staff Sergeant [redacted] reported that Staff Sergeant Waters' conduct resulted in her becoming embarrassed and stressed.

Staff Sergeant Waters' conduct breached the Durham Regional Police Service Code of Professional Conduct (AO-09-010) and the Durham Regional Police Service Anti-Harassment and Violence Policy (HR-02-011).

### **Agreed Statement of Fact**

Counsel submitted that one document would satisfy both the Agreed Statement of Fact and the Particulars of Allegations. Therefore, the Agreed Statement of Fact is identical to the Particulars of Allegations as noted above.

### **Plea / Penalty Position**

Staff Sergeant Waters represented by Joanne Mulcahy, entered a guilty plea to one count of discreditable conduct. Based on the standard of clear and convincing evidence which was contained in the Agreed Statement of Fact, I found Staff Sergeant Waters guilty.

Mr. Alex Sinclair represented the Durham Regional Police Service as prosecutor. Mr. Sinclair and Ms. Mulcahy submitted a joint penalty position as follows:

- a) Staff Sergeant Waters shall forfeit 80 hours to be worked at the discretion of his supervisor;
- b) Staff Sergeant Waters will deliver written apologies through the Professional Standards Unit to Sergeant                      and to staff Sergeant                      for his conduct; and,
- c) Staff Sergeant Waters shall participate in remedial training and a workplace restoration session conducted by Marshall Workplace Law within three months of the date of this penalty decision.

### **Decision**

I find that the joint penalty position is reasonable and as such, Staff Sergeant Waters is to be sanctioned accordingly.

### **ANALYSIS**

Counsel submitted that the penalty proposed is based on the unique circumstances of this case, not all of which were referenced before this Tribunal and consequently this decision is not to be relied upon as a precedent in other matters. While I am not bound by the joint penalty proposed by Counsel, to reject it, I would have to find that it is outside the reasonable range of available penalties for similar misconduct, that it conflicts with commonly held proportionality considerations and that accepting it would bring the administration of justice into disrepute.

The principles to be considered with respect to assessing an appropriate penalty for police misconduct are well established:

- Penalties should accord with the purposes of the police discipline process including;
  - i. The employer's interest in maintaining discipline in the police workplace.
  - ii. The Respondent officer's right to be treated fairly.
  - iii. Public Interest – ensuring a high standard of conduct and public confidence in police.
- Corrective dispositions should prevail, where possible, with an emphasis on a more remedial philosophy over a punitive philosophy in assessing penalty.
- The presumption that the lowest penalty should be imposed, where possible.
- There should be proportionality of the penalty to the offence.
- Higher standards of conduct apply to police officers.

To determine whether the joint penalty proposed is fitting, I must adhere to the general sentencing principles applicable to Code of Conduct disciplinary proceedings as enunciated in the *Ceyssens & Childs Police Services Act* which states:

It is a "fundamental proposition" that a disposition must be proportionate to the misconduct, "given due regards to those special considerations applicable to service in the police force." Proportionality is arguably the most complex of the five principles that govern the process of crafting an appropriate disposition, and requires three decisions:

- First, a decision-maker must identify which disposition considerations are *relevant* to the matter in question.
- Second, a decision-maker must determine whether the relevant disposition considerations are *mitigating, aggravating or neutral*.
- Third, the decision-maker must *properly balance* (or appropriately "weigh") the identified relevant considerations in accordance with the factual background of the matter, and the competing interests. Thus "a decision-maker must give proper weight to the relevant factors in a particular case," and a "proper balance" is of "utmost importance." In Ontario, although the Commission frequently cites various disposition considerations as "key factors", it has stated that "there is no requirement that any one factor be given more weight than another," while at the same time stating that a hearing officer need not give all the factors equal weight and one factor can support the highest penalties, if appropriate.

Jurisprudence is well established wherein relevant mitigating and aggravating considerations that I am to consider when assessing an appropriate penalty for police misconduct are identified. Not all proportionality considerations are relevant to each case.

I will consider the penalty factors that I find relevant to this matter which will guide me in assessing whether the proposed sanction is fitting.

### Public Interest

Counsel jointly submitted that the public holds police officers in a position of high trust and accountability. Conduct involving unwelcome and inappropriate behaviour erodes public trust. It is extremely important that the Durham Regional Police Service demonstrate that its members are held to the high standard of integrity expected of them.

I accept that position. The public has an interest in ensuring police officers demonstrate professionalism not only while off duty, but perhaps even more so while on-duty. Public trust is fragile and is easily eroded when an officer fails to meet the public's expectations. Staff Sergeant Waters' conduct offended the public's trust in him and by association, their trust in the Durham Regional Police Service. To maintain or re-establish that trust, it is necessary for the Durham Regional Police Service to demonstrate that its members are held to the high standard of integrity expected of them.

The public must be satisfied that misconduct of this nature will attract an appropriate sanction. The public must have confidence that the Durham Regional Police Service will hold members accountable for conduct of this nature. Staff Sergeant Waters' behaviour must generate a sanction which corresponds to the seriousness of his misconduct.

Public Interest is an aggravating feature but the proposed sanction adequately addresses this penalty factor.

### Nature and Seriousness of the Misconduct

Counsel agreed that Staff Sergeant Waters' misconduct is a serious matter. It involved a pattern of conduct that occurred over a period of time rather than a single isolated incident. They noted that members of Durham Regional Police Service are expected to conduct themselves professionally in accordance with Durham Regional Police Service policies and directives at all times and that Staff Sergeant Waters' conduct fell below this standard.

I note that the conduct in question took place over 10 months, on more than one occasion, involving two separate complainants, and it occurred in the presence of other members of the Durham Regional Police Service. Staff Sergeant Waters' behaviour eroded members' perception of Sergeant [redacted] authority. Furthermore, the conduct was disrespectful and irresponsible; it is behaviour which cannot be tolerated.

The Nature and Seriousness of the Misconduct is an aggravating factor but it has been sufficiently addressed by the significant penalty agreed upon by Counsel.

#### Specific and General for Deterrence

I accept Counsel's submission that it is crucial the penalty imposed serve as a general deterrent for all members of the Durham Regional Police Service to inform them that behaviour of this nature will not be tolerated. Also, the penalty must act as a specific deterrent for Staff Sergeant Waters to prevent reoccurrence so as to illustrate this behaviour is unacceptable.

The forfeiture of 80 hours combined with training and letters of apology is a considerable sanction. I am satisfied that the proposed sanction addresses the aggravating features of Specific and General Deterrence.

#### Damage to the Reputation of the Durham Regional Police Service

This penalty factor addresses reputational harm arising from the original misconduct and the harm that would occur to the reputation of the police service if the respondent police officer were to remain a member. In this instance there is no suggestion that Staff Sergeant Waters ought to be dismissed for his behavior. To assess the extent of the damage to the reputation of the police service associated to the misconduct, it is appropriate for me as hearing officer to place myself in the position of a reasonable person in the community.

There was no indication that the media had reported on this matter, but I must consider the damage that would be done if the public became aware of it. Police services work hard to develop and protect a positive public image. Staff Sergeant Waters' reputation and that of his employer would be tarnished if this were to become public knowledge. The public expects police officers to demonstrate professionalism in the workplace, not to exhibit harassing, disrespectful behaviour as displayed by Staff Sergeant Waters over an extended period of time.

The penalty imposed must be crafted in such a manner that it helps to instil confidence in the community, in other members of the police service, and to restore the reputation of the Durham Regional Police Service. In this instance, I am satisfied that the proposed sanction adequately addresses the aggravating factor of Damage to the Reputation of the Durham Regional Police Service.

### Recognition of the Seriousness of the Misconduct and Rehabilitation Potential

Staff Sergeant Waters' guilty plea and joint submission on penalty demonstrates that he has accepted responsibility for his misconduct. Staff Sergeant Waters' guilty plea and joint submissions on penalty have eliminated the need for two lengthy hearings, potential appellate proceedings, and the need for numerous members of the Durham Regional Police Service to testify including the two complainants.

Staff Sergeant Waters admitted that he committed serious acts of misconduct and has agreed to a significant sanction which includes apologizing to the complainants. This is behaviour which suggests he has learned from his mistakes, is remorseful, and is prepared to move forward in a positive manner. This bodes well for his potential to rehabilitate. Staff Sergeant Waters briefly addressed the Tribunal, apologizing for his behaviour.

Recognition of the Seriousness of the Misconduct and Rehabilitation Potential are mitigating factors for consideration.

### Employment History

Staff Sergeant Waters has a positive employment history with no record of previous discipline. Ms. Mulcahy submitted a number of Staff Sergeant Waters' commendations and his performance reviews from 2019, 2021, and 2022, all of which support Counsel's submission that Staff Sergeant Waters has been a positive contributor and an asset to the Durham Regional Police Service.

### Consistency of Penalty

The purpose of this penalty factor is to ensure that the sanction proposed is within the range of sanctions available. Counsel did not provide the Tribunal with similar cases for consideration. As noted, Counsel submitted that the penalty proposed is based on the unique circumstances of this case and consequently, this decision is not to be relied upon as a precedent in other matters. That position illustrates the fact that this case has distinctive features.

I am unconcerned about the lack of comparable cases, I am satisfied the joint penalty is fair, reasonable, and within the range of penalties available; Counsel in this matter are very experienced in police disciplinary tribunals and I am content knowing that they canvassed suitable cases which provided them guidance in arriving at a forfeiture of 80 hours.



## Conclusion

Staff Sergeant Waters' behaviour was inexcusable and unprofessional; it resulted in causing unnecessary stress to two of his co-workers and adversely affected Sergeant ability to supervise. Staff Sergeant Waters' misconduct is considered serious in nature but he agreed to the facts in issue and to the penalty proposed. He also has a positive employment history and is a strong candidate for rehabilitation. Therefore, I can see no reason to deviate from the sanction proposed; it is balanced, fair, and satisfies the principles governing the appropriate determination of a disposition.

## Disposition

Staff Sergeant Waters pleaded guilty and was found guilty of discreditable conduct based on the standard of clear and convincing evidence. After weighing aggravating and mitigating factors, I find the proposed sanction meets the goals of the discipline process; it strikes a balance between community expectations, fairness to Staff Sergeant Waters, and the needs of the organization.

I order Staff Sergeant Waters to forfeit 80 hours which are to be worked in consultation with and at the discretion of his supervisor. Staff Sergeant Waters will deliver written apologies through the Professional Standards Unit to Sergeant and to Staff Sergeant for his conduct, and Staff Sergeant Waters shall participate in remedial training and a workplace restoration session conducted by Marshall Workplace Law within three months of the date of this penalty decision.

This order is made pursuant to Section 85(1)(f), and Section 85(7)(b) of the *Police Services Act*, R.S.O. 1990. This order was delivered in person on July 15, 2024, with immediate effect knowing this written decision was to follow.

At the joint request of Counsel I remain seized with this matter with respect to the implementation of this penalty should any issues arise subsequent to this order.



Greg Walton  
Superintendent (Ret.)  
Ontario Provincial Police

Delivered electronically, July 18, 2024  
Amended and re-delivered electronically, July 29, 2024